

## Today on the M&NJ

The deal between Regional Rail and Norfolk Southern to have M&NJ take over local operations based at Campbell Hall was not welcomed by all involved parties. The UTU, United Transportation Union, filed a “Motion for Access to Confidential Documents” on September 11<sup>th</sup> with the claim that “UTU-NY needs further information for the proposed 40.51 mile transactions, so as to enable UTU-NY to properly understand the transactions, in order that UTU-NY may determine whether to seek a timely stay and/or petition to revoke.” This motion was not opposed by M&NJ and was granted by the STB, the Surface Transportation Board.

On September 13<sup>th</sup>, the STB issued a decision whereby it revoked “the delegation to the Director (Office of Proceedings) with respect to the issuance of this notice of exemption. The Board determines that this notice of lease and operation exemption should be issued, and does so here.” The Board had decided the M&NJ application was an issue “of general transportation importance” and therefore felt it was the more appropriate entity for this action versus the Director of the Office of Proceedings who has the “authority to determine whether to issue notices of exemption for lease transactions...” Interestingly, the Board cited an expiration date of December 31, 2020 for the agreement, information absent from M&NJ’s “Verified Notice of Exemption”. However, Vice Chairman Mulvey of the STB dissented (apparently in a vote of 2 to 1) as he stated “Once again, I must disagree with the Board’s decision to allow a transaction containing a significant interchange commitment to be processed under the Board’s class exemption procedures at 49 C.F.R. 1150.41. I believe that it is incumbent for the Board to take a close look at interchange commitments before permitting them to become effective, particularly when they contain outright bans on interchange with third-party carriers or, as here, economic incentives that can only be evaluated with the provision of additional information.” Mulvey cited the “credit” M&NJ would earn toward its annual lease payment for every car interchanged with NS at Campbell Hall and wondered if this “credit” would be so large as “to eliminate any incentive by M&NJ to interchange with a third-party carrier...” He also was concerned with the number of shippers and carloads involved in the interchange commitment and “what competitive routing options are being foreclosed during the term of the lease.” Mulvey favored application of the Board’s “more detailed application or a petition for exemption procedures” which would provide the information he was seeking.

The UTU soon followed up with a “Petition for Stay” against the M&NJ filing on September 23<sup>rd</sup> stating “The Board should stay the exemption pending disposition of the forthcoming UTU-NY petition to revoke.” The UTU characterized the M&NJ expansion as “an unusual and complicated proposed transaction, for which the 49 U.S.C. 10902 class exemption was not designed.” Among the reasons cited in the “Petition for Stay” was M&NJ’s continued listing in The Official Railway Guide as “A Chartwell International, Inc. Company” with an address at 140 East Main Street, Middletown whereas the headquarters of the M&NJ is in Kennett Square, Pa., “a remote location of M&NJ adverse to proper operation of these important lines in the involved New York area, embracing heavily populated and commuter rail operations. Close supervision is essential to efficient and safe operations, such that this factor supports a stay.” The UTU cited the dissent of the STB Vice Chairman in the “Decision & Notice” wherein mention was made that the interchange agreement between NS and M&NJ “presents many undisclosed and anticompetitive features of rail traffic movements.” The UTU also cited the involvement of four carriers as making the transaction too complex for the 10902 exemption and safety concerns about “a small carrier with unknown personnel, would be operating on important commuter trackage”. The UTU also stated fifteen NS employee positions would be lost.

The UTU then filed a “Petition to Revoke Exemption” on the 27<sup>th</sup>. They claimed an inability “to confirm the existence or extent of M&NJ’s present operations due to M&NJ’s listing in the Official Railroad Station List still showing stations between Middletown and Unionville whereas The Official Railway Guide shows the railroad only extending between Middletown and Agway Station. The UTU reiterated its concern that the transaction with numerous agreements and the involvement of four carriers was too complex for the class exemption; the anticompetitive aspect of the interchange agreement between NS and M&NJ; a demand that “The STB should require “fitness” testimony from M&NJ, proving any ability to provide honest and efficient management” based on conflicting listings in industry publications; safety concerns because M&NJ would “be performing operations on passenger trackage” and a concern for “employee interest in fair wages and suitable working conditions.” Instead of a class exemption, the UTU favors “remitting M&NJ to an individual exemption petition or application”.

On the 28<sup>th</sup>, the M&NJ filed a “Reply to United Transportation Union-New York State’s Petition for Stay” and addressed the various arguments presented by the UTU. M&NJ stated it “is not the same company with a similar name listed in past issues of The Official Railway Guide and although its headquarters is in Kennett Square, Pa., it has a local office at 140 East Main Street, Middletown, as opposed to NS with headquarters in Norfolk, Va., and a local office at Jersey City. “Thus, M&NJ will be a much more locally based carrier than NS.” M&NJ stated “UTU is not a shipper and it is unlikely that UTU would qualify as an “affected party”. M&NJ further stated the Lease Agreement is not a “total ban on interchanging with another rail carrier nor does it provide for a penalty payment if such third party interchange occurs.” “M&NJ requested the per car credits set forth in the Lease Agreement so that M&NJ could earn sufficient income from operations over the Leased Lines not only to cover operating and routine maintenance costs, but also sufficient income to upgrade the Leased Lines. The Lease Agreement, without the interchange commitment, is adequate to maintain the status quo. In order to attract new customers to the Leased Lines, however, the Leased Lines need to be upgraded.” M&NJ stated it would have the freedom to route via the NYS&W if such was “economically more beneficial to M&NJ or is reasonably requested by a shipper....” As to the UTU’s assertion that the transaction’s scope exceeded what should be handled by a class exemption, the M&NJ pointed out previous cases of 142 and 273 miles. Metro North was not viewed as “a party to this transaction. As part of this transaction, M&NJ is being granted incidental trackage rights over 4.36 miles of track that NS subleases to Metro, which Metro used to conduct rail operations.” UTU’s safety concerns were countered by the assertion that all M&NJ employees had “recently successfully passed the Northeast Operating Rules Advisory Committee (“NORAC”) testing and the NORAC Rules and NS Rules Test administered by an official from NS and attended by a trainmaster from Metro.” The UTU claim of 15 NS employees to be displaced was countered by the assertion that NS claims just one signal maintainer, one engineer and one conductor position at Campbell Hall will be abolished. Finally, M&NJ contended that a stay would delay the benefits of improved service and track upgrades that the M&NJ would bring to the Leased Lines and “cause M&NJ to incur significant expenses, resulting in a loss of business that will be unrecoverable and cause uncertainty among its employees and the shippers located on the Leased Lines. Indeed, M&NJ has hired and trained four new employees and acquired equipment, including locomotives, a hi-rail vehicle and other materials needed for the operation of the Leased Lines.”

The STB responded by postponing its decision until October 7<sup>th</sup>. In a decision dated September 29<sup>th</sup>, the Board imposed a “housekeeping stay of the effective date of the notice of exemption” to “provide the Board sufficient time to fully consider the issues presented by the petition for stay. The Board also noted that while M&NJ had filed a reply on the 28<sup>th</sup> in opposition to the UTU’s petition for stay, “M&NJ has not yet responded to UTU-NY’s petition to revoke.”

On October 6<sup>th</sup> the STB rejected the UTU's appeal for a stay and permitted the exemption to become effective on October 7<sup>th</sup>. The Board ruled that the UTU "failed to meet its burden" on each of the four "traditional stay criteria": likelihood to "prevail on the merits of any challenge to the action sought to be stayed"; "it will suffer irreparable harm in the absence of a stay"; "other interested parties will not be substantially harmed by a stay" and "the public interest supports the granting of the stay". Since the M&NJ is "contractually able to route traffic over NYS&W" the Board did not feel the interchange agreement merited a "higher level of scrutiny" and found that the UTU had not explained "how the interchange commitment would negatively impact development of a sound rail transportation system with effective competition, sound economic conditions, public health and safety, honest and efficient management railroads, or fair wages and safe and suitable working conditions in the railroad industry." The Board rejected the UTU's argument that the "proposed transaction is beyond the scope of the typical carrier acquisition and operation exemption, both because of the number of carriers involved and the number of agreements involved in the transaction." STB regulations "do not limit the class exemption to transactions involving 3 carriers." Also Metro North was not seen as being involved in the lease. UTU was considered to have failed to demonstrate that M&NJ "has a history of unsafe operations or a history of negative impacts on commuter operations. Nor has MCNR, which has incidental trackage rights over 4.36 miles of the involved track, raised any concerns with the Board regarding safety and its passenger operations." The STB stated the UTU had "not adequately demonstrated that its members would suffer irreparable harm" as their seniority on NS would give them other positions near Campbell Hall to bump into and NS did not expect to furlough "any such employees". The STB did not find that UTU had proved that 15 NS employees were involved when NS indicated only three were affected. UTU did not offer "substantive argument regarding the absence of harm to other interested parties." to counter M&NJ's claim that a stay adversely effect shippers on the branches by delaying "the benefits they will realize once M&NJ commences operations." Finally, the UTU "failed to show how a stay would be in the public interest". The three-member STB was unanimous in its decision. A statement by Vice Chairman Mulvey summed up the decision, "UTU-NY has submitted insufficient evidence and argument to satisfy the Board's stay criteria in this case."

Meanwhile Regional Rail continued its preparations and on Wednesday night, the 29<sup>th</sup> of September, H07 dropped off ESPN 7811 and 5114 at Campbell Hall. 7811 is a B30-7 and 5114 is a B23-7, both former Southern Pacific General Electric 4-axle freight units. Conrail, in its later years, often operated B23-7's on the locals based at Campbell Hall and B30-7's made rare appearances as their 3,000 horsepower (versus 2,300 horsepower for the B23-7's) was not needed for local freight service. On October 3<sup>rd</sup>, both units were seen idling by the East Main Street station in Middletown. Both wore a dark blue livery with yellow trim and "ESPN" lettering. It was said the units were to be prepared for service by having their horns and other equipment re-installed. (These items had been removed before painting and shipping of the units). The units were also to have a final mechanical inspection before entering service. By October 7<sup>th</sup>, 5114 was reported to have maintenance issues which would restrict it to the M&NJ and the Branch while 7811 and GP9 773 would be assigned to work out of Campbell Hall. It was reported that on October 12<sup>th</sup>, 773 was switching Campbell Hall yard while 7811 was making the first run to Walden and Montgomery.

The expanded M&NJ operations now cover 43 miles. However, the M&NJ still interchanges with NS in DG Yard and does not have trackage rights over the former O&W main from East Main Street to Four-Story Jct. Neither does the M&NJ have trackage rights between Four-Story Jct. and Campbell Hall. Thus NS will interchange cars to the M&NJ at Campbell Hall for the M&NJ to deliver to customers on the branches the M&NJ will serve out of Campbell Hall and NS will then serve any customers along the Graham Line as well as deliver cars to the M&NJ at

DG. From Campbell Hall, one branch runs northward to end at Walden while another diverges from that line, just north of the Campbell Hall yard, to run through Maybrook and up to Montgomery. The M&NJ also has trackage rights from Campbell Hall eastward over NS to Hudson Jct. where they pick up the former L&HR to run via Greycourt and Chester to Warwick. Maybrook and Walden are shown as transload locations in addition to Dolson Ave. on the original M&NJ. Interestingly, Greycourt, which was a team track under CR, is not shown as a transload and some, if not all of that business, seems to have moved to Dolson Avenue on the original M&NJ (Crop Production Services).

The roster of customers on the new lines appears to be dominated by wholesale lumber companies although we have no information on the volume of traffic to each customer or the relative revenues generated. It should be noted that a carload of chemicals will produce much higher freight revenues than a carload of lumber. This may not be a complete list of customers on the lines to Walden and Maybrook/Montgomery. Staples appears to receive boxcars. Russin Lumber, Montgomery, operates a fleet of 18 tractor trailers to distribute lumber and building specialty products to independent retail lumber dealers in the Northeastern and Mid-Atlantic states. Eastern Alloys manufactures zinc alloys in a 100,000 square foot building on a 90 acre site in Maybrook and at a newer plant in Henderson, KY. Sherwood Lumber is a Long Island based distributor of building materials with 30 to 40 distribution centers spread across the US serving over 1,800 lumber yards and manufacturers. American Lumber is a wholesale only distributor of specialty lumber and building products serving retail lumber yards and home centers from Boston to Baltimore from its Walden facility. Ampac has multiple facilities manufacturing flexible packaging for the retail, food, security and medical packaging markets. Other possible customers are Lobo Distributing and Truffa Seed. The line to Warwick includes Conklin Lumber and Jones Chemical in Warwick and a lumber distributor east of Warwick (Mid-States?).

On September 15<sup>th</sup>, an automobile ran into a PLCX covered hopper on the County Route 78 crossing at about 12:30 PM. The highway was briefly closed but injuries were minor and the car was able to drive away. Apparently the M&NJ was moving some of the stored covered hoppers. Some of the stored cars have elicited complaints from people living near the right-of-way as the Mid-Hudson News reported on October 8<sup>th</sup> that Congressman Maurice Hinchey had intervened when the M&NJ and the City of Middletown reached an impasse on the issue of the stored hoppers. The cars had become an issue “because children were playing on them and they were impacting the quality of life in the neighborhood...”. The M&NJ acceded to Hinchey’s request and agreed to promptly remove the cars. Ed Horan believes “they’re talking about hoppers stored between Uhlig Rd. and Chestnut Drive, in Amchir. The citizens referred to are the people living in the new appt. complex at 74-76 Uhlig Rd.”

On October 5<sup>th</sup> it was reported that large quantities of track material were being delivered to DG Yard and it appeared that the long-awaited rehab of the first mile was imminent. Rail and new switch stands were in the initial five truckload deliveries with ties expected shortly.

The website of Regional Rail lists A&R Logistics as providing transload services on the “original” M&NJ. The A&R Logistics website described their company thusly: “Founded in Ottawa, IL in 1969 with two trucks, A&R Logistics has gone on to become the leading provider of bulk plastic and dry flowable transportation, as well as a logistics service provider within the U.S. With over 800 trucks, strategically located packaging and warehouse facilities, combined with our supply chain technology and expertise, we are uniquely positioned to provide innovative supply chain solutions through one or more of the A&R companies.” Regional Rail’s website also states that the M&NJ offers car storage and track maintenance services.

On August 22nd, the Times Herald-Record reported Chartwell International, former owner of the M&NJ, filed for bankruptcy on the 16<sup>th</sup>. “Chartwell's subsidiary, the defunct Middletown & New Jersey RR Inc., filed for bankruptcy earlier this month, citing as its sole asset a 7.8-linear-mile stretch of old rail bed valued at \$374,000. The company is still working on selling off that rail bed to Orange County. The Middletown & New Jersey corporation lists nearly \$1.5 million in liabilities.” Chartwell claims \$1.37 million in assets, including land and coal reserves in southern Ohio plus the Middletown & New Jersey assets, versus liabilities of \$5.15 million. Chartwell’s 8-K filing to the federal Securities and Exchange Commission also stated “The registrant has filed a pre-packaged bankruptcy on the basis that it believes that it has obtained the requisite approval from its creditors under the U. S. Bankruptcy Code for its plan of reorganization. At the hearing today on the registrant's first day motions, the Bankruptcy Court ordered, among other matters, that on September 8, 2010 the Bankruptcy Court would hold a hearing on its interim approval of debtor-in-possession financing and that on October 1, 2010 it would hold a hearing on confirmation of the registrant's plan of reorganization. The registrant will continue to operate its business as debtor-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and the orders of the Bankruptcy Court.” Chartwell’s chief financial and administrative officer, Paul Biberkraut, left the company earlier in the year on February 5<sup>th</sup>.

Metro North was to substitute bus service for train service during off-peak hours between Harriman and Suffern from September 27<sup>th</sup> through October 15<sup>th</sup> to permit the replacement of 16,000 ties.

Thanks to Ed Horan, Ed Lewis and Jim Dent for providing information. The Times Herald-Record has also been a source of information as has Orange County Rails (a Yahoo group), the M&NJ RHS Discussion Group, <http://www.midhudsonnews.com> and the Surface Transportation Board.